

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HDI-GERLING AMERICA INSURANCE
COMPANY, as successor in interest to Gerling
America Insurance Company,

Plaintiff,

v.

ORDER
10-CV-740S

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant.

LIBERTY MUTUAL INSURANCE COMPANY,

Third-Party Plaintiff,

v.

DYNAMIC PAINTING CORPORATION,
ROMANO ENTERPRISES OF NEW YORK
INC., and DYNAMIC PAINTING
CORPORATION/ROMANO ENTERPRISES OF
NEW YORK INC., A JOINT VENTURE,

Third-Party Defendants.

1. This insurance defense and indemnification action was initially commenced by Plaintiff HDI-Gerling America Insurance Company ("HDI") in New York State court and removed to this Court based on diversity by Defendant Liberty Mutual Insurance Company ("Liberty Mutual") on September 13, 2010. In turn, Liberty Mutual filed a third-party complaint asserting a subrogation claim against Dynamic Painting Corporation, Romano Enterprises of New York, and Dynamic Painting Corporation/Romano Enterprises of New York, a Joint Venture, to recover any amounts for which it may be found liable to HDI.

2. On November 9, 2010, this Court referred all dispositive motions to the Honorable Jeremiah J. McCarthy, United States Magistrate Judge, to prepare and file a report and recommendation containing findings of fact, conclusions of law and a recommended disposition of such motions pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Presently before this Court is the Report and Recommendation of Judge McCarthy recommending that Liberty Mutual's motion for summary judgment dismissing HDI's complaint against it be granted.

3. Despite being expressly advised that any objections to this Report and Recommendation were required to be filed by August 2, 2013, in accordance with 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of this Court, no objections were filed.

IT HEREBY IS ORDERED, that this Court accepts Judge McCarthy's Report and Recommendation (Docket No. 81) in its entirety, Liberty Mutual's Motion for Summary Judgment (Docket No. 74) is therefore GRANTED and HDI's complaint against it is dismissed in its entirety;

FURTHER, because the dismissal of HDI's complaint renders moot the only issue raised in the third-party complaint, that complaint is likewise dismissed;

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: August 30, 2013
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court